

ST 96-11

Tax Type: SALES TAX

Issue: Unreported/Underreported Receipts (Fraud)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

TAXPAYER,

Taxpayer

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Docket #

IBT #

NTL#

William J. Hogan

Administrative Law Judge

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RECOMMENDATION FOR DISPOSITION

APPEARANCES

ATTORNEY FOR TAXPAYER

SYNOPSIS

TAXPAYER (HEREINAFTER "TAXPAYER") IS A HARDWARE STORE IN ILLINOIS. IN THE COURSE OF A RETAILERS' OCCUPATION AND USE TAX AUDIT FOR THE PERIOD JANUARY 1, 1989 THROUGH DECEMBER 31, 1991, AN AUDITOR FOR THE ILLINOIS DEPARTMENT OF REVENUE (HEREINAFTER "DEPARTMENT") PREPARED A SALES AND RECEIPTS RECONCILIATION IDENTIFIED AS "SCHEDULE 3". THE SOLE ISSUE FOR REVIEW IS THE TAXPAYER'S DISAGREEMENT WITH THE FINDINGS IN SCHEDULE 3 FOR THE YEAR 1989. ITEMS REFLECTED AS INCOME FOR THAT YEAR WERE ASSESSED AS SALES TAX, CONTRARY TO THE TAXPAYER'S POSITION THAT THE ITEMS DID NOT REFLECT SALES, BUT RATHER VARIOUS EXPENSE ACCOUNTS THAT WERE NOT CREDITED BY TAXPAYER'S BOOKKEEPERS TO REFLECT THE INCOME WAS NOT FROM SALES. IT IS RECOMMENDED THAT THE ASSESSMENT AS ISSUED BE UPHELD.

#### FINDINGS OF FACT

1. THE DEPARTMENT'S PRIMA FACIE CASE, INCLUSIVE OF ALL JURISDICTIONAL ELEMENTS, WAS ESTABLISHED BY THE ADMISSION INTO EVIDENCE OF THE CORRECTION OF RETURNS SHOWING A TOTAL TAX, PENALTY, AND INTEREST LIABILITY OF \$2,974. DEPT. GRP. EX. NO. 5
2. THE TAXPAYER IS A HARDWARE STORE IN ILLINOIS OPERATING ON THE CASH BASIS ACCOUNTING SYSTEM FOR RETAILERS' OCCUPATION TAX PURPOSES. DEPT. GRP. EX. NO. 6
3. THE TAXPAYER'S FEDERAL INCOME TAX RETURN FOR 1989 HAD A LARGER SALES FIGURE THAN DID THE TAXPAYER'S RETAILERS' OCCUPATION TAX RETURNS FOR THAT YEAR. DEPT. GRP. EX. NO. 6
4. TAXPAYER'S EXHIBIT NO. 1 WAS THE DEPARTMENT'S AUDITOR SCHEDULE NO. 3. THE SCHEDULE WAS IDENTIFIED AS "SALES/RECEIPTS RECONCILIATION". THE TAXPAYER EXCLUSIVELY TOOK ISSUE WITH THE CORRECTNESS OF THE AMOUNT OF \$40,930 IDENTIFIED AS UNREPORTED TAXABLE SALES. THE DISCREPANCY OF \$40,930 WAS ASSESSED AS UNREPORTED SALES. TR. PP. 11, 12
5. THE TAXPAYER IDENTIFIED VARIOUS BANK ACCOUNT ADJUSTMENTS MADE ON THE TAXPAYER'S LEDGER. TAXPAYER EX. NO. 1, APPENDIX NO. 2
6. THE SUBJECT BANK ACCOUNT ADJUSTMENTS WERE CREDITED TO SALES IN THE AMOUNT OF \$62,314.59 IN ORDER TO ADJUST THE ACCOUNTS. TR. P. 16
7. THE TAXPAYER MADE ENTRIES ON ITS BOOKS WHICH IT RECONCILED BY CREDITING SALES, NOT KNOWING SPECIFIC IDENTIFICATION FOR THE MONIES. TR. P. 18

8. THE TAXPAYER'S ACCOUNTANT ADMITTED THAT THE MONIES COULD HAVE BEEN POSTED CORRECTLY, BUT HE CHOSE TO POST THEM TO SALES, BECAUSE ERRORS WERE MADE BY THE TAXPAYER'S INTERNAL BOOKKEEPER. TR. PP. 19, 20
9. THE TAXPAYER'S ACCOUNTANT ADMITTED THE \$40,930 ERROR WAS DUE TO THE FACT THAT THE TAXPAYER HAD CONVERTED FROM A MANUAL SET OF BOOKS TO A COMPUTERIZED SET OF BOOKS. INEXPERIENCED ACCOUNTING PERSONNEL DOUBLE RECORDED CASH DISBURSEMENTS. TR. PP. 19-23 THIS IS A STATEMENT OFFERED AS FACT.
10. THE TAXPAYER'S ACCOUNTANT ADMITTED THAT THE DISCREPANCIES IN THE FEDERAL INCOME TAX RETURN AND THE SALES TAX RETURNS WERE ATTRIBUTABLE TO PERSONNEL PROBLEMS WITH DATA ENTRY. TR. P. 27

#### CONCLUSIONS OF LAW

THE RETAILERS' OCCUPATION TAX ACT, (35 ILCS 120/1) PROVIDES THE FOLLOWING:

"AS SOON AS PRACTICAL AFTER ANY RETURN IS FILED, THE DEPARTMENT SHALL EXAMINE SUCH RETURN AND SHALL IF NECESSARY CORRECT SUCH RETURN ACCORDING TO ITS BEST JUDGMENT AND INFORMATION, WHICH RETURN SO CORRECTED BY THE DEPARTMENT SHALL BE PRIMA FACIE CORRECT AND SHALL BE PRIMA FACIE EVIDENCE OF THE CORRECTNESS OF THE AMOUNT OF TAX DUE AS SHOWN HEREIN."

THE STATUTE HAS BEEN STRICTLY CONSTRUED INsofar AS ESTABLISHING A PRIMA FACIE CASE IS CONCERNED, AND THE ILLINOIS COURTS HAVE UNIVERSALLY SUSTAINED

A PRIMA FACIE CASE BASED UPON THE CORRECTED TAX RETURN. FILLICHIO V. DEPARTMENT OF REVENUE, 15 ILL.2ND 327 (1985).

ONCE THE CORRECTED RETURN IS OFFERED INTO EVIDENCE, THERE IS A STATUTORY BURDEN PLACED UPON THE TAXPAYER TO ESTABLISH BY COMPETENT EVIDENCE THAT THE CORRECTED RETURN OF THE DEPARTMENT IS INCORRECT, AND UNTIL THE TAXPAYER PROVIDES SUCH PROOF, THE CORRECTED RETURN IS PRESUMED CORRECT. MASINI V. DEPARTMENT OF REVENUE, 60 ILL. APP.3RD 11 (FIRST DIST. 1978). IN ORDER TO OVERCOME THE PRESUMPTION OF VALIDITY ATTACHED TO THE DEPARTMENT'S CORRECTED RETURN, THE TAXPAYER MUST PRODUCE COMPETENT EVIDENCE IDENTIFIED WITH ITS BOOKS AND RECORDS IN SHOWING THAT THE DEPARTMENT'S RETURNS ARE INCORRECT.

THE TAXPAYER HAS ALLEGED A COMPETENT REASON WHY UNIDENTIFIED INCOME WAS ASSESSED AS UNREPORTED TAXABLE SALES INCOME. HOWEVER, THE ORAL TESTIMONY EXPLAINING TAXPAYER'S LEDGERS AND BANK ENTRIES CATEGORIZING SUCH SALES ARE NOT SUFFICIENT PROOF OF THE ACCOUNTING ERRORS ALLEGED. RATHER THEY SUPPORT THE AUDITORS ASSESSMENT. SPECIFICALLY, VOIDED CHECKS OR DUPLICATE CHECKS NEED TO BE PROFFERED TO PROVE THE ORAL ALLEGATIONS. THE TAXPAYER'S ACCOUNTANTS ADMISSION AT PAGE 28 OF THE TRANSCRIPT WHEREIN HE STATES THE DISPUTED FIGURE WAS TERMED SALES INCOME BY THE TAXPAYER FOR CONVENIENCE OF CATEGORIZATION IS RECOGNIZED AS A LIKELY ERROR. HOWEVER, WITHOUT CHECKS PROFFERED TO PROVE THE ERROR, THE TAXPAYER HAS NOT MET ITS BURDEN OF PROOF.

#### RECOMMENDATION

IT IS MY RECOMMENDATION THAT NOTICE OF TAX LIABILITY NO. XXXXX BE FINALIZED.

DATED: \_\_\_\_\_

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ADMINISTRATIVE LAW JUDGE